

REMARKS

The Office Action mailed March 9, 2006 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-20 are now pending in this application. Claims 1-20 stand rejected. Claims 1, 10, and 19 have been amended.

The rejection of Claims 1-20 under 35 U.S.C. § 103 as being unpatentable over WebVan as evidenced by at least Borders et al. (PCT International Application Pub. No. WO 00/68859) (hereinafter referred to as "Reference A"); Borders et al. (PCT International Application Pub. No. WO 00/68856) (hereinafter referred to as "Reference B"); and Borders et al. (U.S. Patent Application Pub. No. 2001/0047285) (hereinafter referred to as "Reference C") is respectfully traversed.

Reference A describes a data network including a plurality of subsystems which, together, form an integrated system for receiving, filling, and delivering ordered products. The network also includes a capacity database for managing capacity data associated with each subsystem. Specifically, the capacity database tracks the amount of customer orders that have not yet been delivered to determine when each subsystem will have an available capacity to deliver an ordered good. By tracking the capacity of each subsystem, the network can relay to the customer a date upon which their good will be delivered. Notably, Reference A does not describe or suggest assigning a work unit to a good based on the size of the good and/or a degree of difficulty in installing the good, and calculating a used portion of a delivery capacity based on assigned work units.

Reference B describes a system for delivering groceries to a customer's home. The system allows a user to purchase groceries online and select a delivery date and time. Specifically, the system tracks a delivery capacity based on customer purchases and uses the information on customer purchases to display delivery times and dates to other users purchasing groceries. Notably, Reference B does not describe or suggest accounting for difficulty of installation when determining the delivery capacity.

Reference C describes a method for scheduling delivery of products via the Internet. The method includes generating a delivery window grid and scheduling the selected window with reference to available resource capacity, which is reflective of a plurality of previous commitments. The method also includes capacity planning. In the method, a number of totes is estimated and updated at checkout based on a plurality of items in a customer's cart and information in a catalog about a volume of those items. This is necessary because in scheduling delivery, the customer is reserving a number of different types of capacity, e.g., van capacity, and service duration. Notably, the number of estimated totes is based solely on the size of the customer's order. Reference C does not describe or suggest assigning a work unit to a good based on the size of the good and/or a degree of difficulty in installing the good, and calculating a used portion of a delivery capacity based on assigned work units.

Claim 1 recites a method of displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said method implemented by a computing unit and comprising the steps of "getting delivery agent information of a delivery agent that delivers a plurality of goods; calculating a first delivery capacity for said delivery agent information, the first delivery capacity represented by a plurality of slots; assigning a work unit to each of the plurality of goods indicative of a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; calculating, by the computing unit, a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ..."

None of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests a method of displaying the capacity utilization of a goods delivery system as is recited in Claim 1. More specifically, none of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests a method wherein a delivery capacity is determined using work units based on at least one of a size of a good and a degree of difficulty in installing the good, as required by Applicants' claimed invention. Rather, in contrast to the present invention, Reference A describes determining capacity based on an amount of undelivered orders. Reference B also describes determining

capacity based on an amount of undelivered orders. Reference C describes determining capacity based on totes indicative of a size of an order. Further, none of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests calculating a used portion of a delivery capacity based on assigned work units, as required by Applicants' claimed invention.

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over WebVan as evidenced by Reference A, Reference B, and Reference C.

Claims 2-9 depend from independent Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-9 likewise are patentable over WebVan as evidenced by Reference A, Reference B, and Reference C.

Claim 10 recites a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said computer program comprising at least one code segment for employing a method of displaying the capacity utilization comprising the steps of "getting delivery agent information of a delivery agent that delivers a plurality of goods; calculating a first delivery capacity for said delivery agent information, the first delivery capacity represented by a plurality of slots; assigning a work unit to each of the plurality of goods indicative of a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; calculating a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ..."

None of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system as is recited in Claim 10. More specifically, none of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests a computer system that determines a delivery capacity using work units based on at least one of a size of

a good and a degree of difficulty in installing the good, as required by Applicants' claimed invention. Rather, in contrast to the present invention, Reference A describes determining capacity based on an amount of undelivered orders. Reference B also describes determining capacity based on an amount of undelivered orders. Reference C describes determining capacity based on totes indicative of a size of an order. Further, none of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests calculating a used portion of a delivery capacity based on assigned work units, as required by Applicants' claimed invention.

Accordingly, for at least the reasons set forth above, Claim 10 is submitted to be patentable over WebVan as evidenced by Reference A, Reference B, and Reference C.

Claims 11-18 depend from independent Claim 10. When the recitations of Claims 11-18 are considered in combination with the recitations of Claim 10, Applicants submit that dependent Claims 11-18 likewise are patentable over WebVan as evidenced by Reference A, Reference B, and Reference C.

Claim 19 recites an apparatus for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said apparatus for displaying the capacity utilization comprising "means for getting delivery agent information of a delivery agent that delivers a plurality of goods; means for calculating a first delivery capacity for said delivery agent information, the first delivery capacity represented by a plurality of slots; means for assigning a work unit to each of the plurality of goods indicative of a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; means for calculating a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ..."

None of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests an apparatus for displaying the capacity utilization of a goods delivery system as is recited in Claim 19. More specifically, none of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests an

apparatus that determines a delivery capacity using work units based on at least one of a size of a good and a degree of difficulty in installing the good, as required by Applicants' claimed invention. Rather, in contrast to the present invention, Reference A describes determining capacity based on an amount of undelivered orders, Reference B also describes determining capacity based on an amount of undelivered orders, and Reference C describes determining capacity based on totes indicative of a size of an order. Accordingly, for at least the reasons set forth above, Claim 19 is submitted to be patentable over WebVan as evidenced by Reference A, Reference B, and Reference C.

Claim 20 depends from independent Claim 19. When the recitations of Claim 20 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claim 20 likewise is patentable over WebVan as evidenced by Reference A, Reference B, and Reference C.

Moreover, Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Reference A, Reference B, or Reference C, considered alone or in combination, describes or suggests the claimed combination. Further, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Reference A, Reference B, and Reference C because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In the present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Further, it is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for these reasons, along with the reasons given above, Applicants request that the Section 103 rejections of the Claims be withdrawn.

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-20 be withdrawn.

Further, Applicants respectfully traverse the Official Notice on page 12 of the Office Action that providing a drill down capability in order to provide additional data as part of a calendar is old and very well known. None of Reference A, Reference B, or Reference C, alone or in combination, describes or suggests using a drill down capability to enable users to efficiently and/or effectively navigate between various “levels” of information.

Moreover, Applicants respectfully traverse the Official Notice on page 15 of the Office Action that expressing data as a percentage is old and very well known. None of Reference A, Reference B, or Reference C, alone or in combination, describes or suggests expressing a delivery agent capacity per day as percentage.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,

Eric T. Krischke

Eric T. Krischke
Registration No. 42,769
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070